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On

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,915	08/26/2003	Guy Summers	48832.830001.US0	5763

26582 7590 10/12/2004

HOLLAND & HART, LLP  
555 17TH STREET, SUITE 3200  
DENVER, CO 80201

EXAMINER
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PAYER, HWEI SIU CHOU

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 10/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/649,915	<b>Applicant(s)</b> SUMMERS ET AL <i>cn</i>	
	<b>Examiner</b> Hwei-Siu C. Payer	<b>Art Unit</b> 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-18 is/are allowed.
- 6) ☒ Claim(s) 1-11 and 19-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## Detailed Action

The amendment filed on 9-16-2004 has been entered.

### Claims Rejection - 35 U.S.C. 112, first paragraph

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-3, 6-8 and 19-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claimed "standard" utility knife blade as cited in claims 1 and 19 have no support from the original specification.

### Claims Rejection - 35 U.S.C. 112, second paragraph

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-11 and 19-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(1) In claims 1 and 19, "standard utility knife blade" is vague and indefinite. It is not what structure of a utility knife blade is defined by the term "standard". Exactly what kind of utility knife blade is a "standard" utility knife blade?

(2) In claims 4, 5 and 9, "the internal space" has no clear antecedent basis.

### **Claims Rejection - 35 U.S.C. 102(b)**

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 6-8 and 19-21 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Davis (U.S. Patent No. 5,890,290).

Davis discloses a utility knife (10) comprising a handle (12), a body (16), a grip (15), a first end (18), a second end (14), first and second utility knife blades (26), at least one notch (44), a gap (108), a slot (28), a first cutting notch (defined between 112,114,116), means (112,114,116) for holding the first utility knife blade (26), and means (20) for moving the second utility knife blade (26) from at least one extended position to at least one retracted position as claimed. Further, the first and second utility knife blades (26) are razor blades and are the same (i.e. trapezoidal shape, see column 5, lines 26-27).

### **Indication of Allowable Subject Matter**

1. Claims 4, 5 and 9-11 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.
2. Claims 12-18 are allowed.

### **Prior Art Citations**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Okada, Quinn, Chen and Cybulski are cited as art of interest.

### **Remarks**

Applicants' arguments filed on 9-16-2004 have been fully considered but they are not persuasive.

Applicants argue, at page 12 of the amendment, Davis's movable blade is of a "break away blade" rather than the claimed "standard utility knife blade". Examiner disagrees. First of all, Davis does not disclose the blade (26) being a "break away blade" as applicants allege. On the contrary, Davis specifically states the utility blade (26) is of a trapezoidal shape (see column 5, lines 26-27) which is a well-known type of razor blade that is widely used in a utility knife (note U.S. Patent Nos. 4,953,293 and 4,974,320 of record). Applicants' also called "break away blade" is of elongate shape and has respective opposing longer and shorter edges parallel and equal to each other (note U.S. Patent Nos. 5,269,063, 5,502,896 and 6,510,612). The so-called "break

away blade" can be snapped one by one along its notched/scored lines to discard a worn portion of the blade. Davis's trapezoidal utility knife blade (26) is clearly not of a "break away blade" type as applicants allege.

Applicants further argue David does not disclose "a handle comprises a body and a grip" as claimed. Examiner disagrees. As shown in Fig.3 of Davis, the handle (12) comprises a body (16) and a grip (15), and the body (16) has a first end (18) and a second end (14) as claimed.

#### **Action Made Final**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

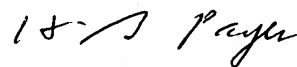
### **Point of Contact**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hwei-Siu C. Payer whose telephone number is 703-308-1405. The examiner can normally be reached on Monday through Friday, 7:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for official communications and 703-746-3293 for proposed amendments.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

H Payer  
October 6, 2004

  
Hwei-Siu Payer  
Primary Examiner